

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP -9 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0181-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
PETER ALEXANDER GRAHAM,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084899

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Sanders & Sanders, P.C.  
By Ken Sanders

Tucson  
Attorneys for Petitioner

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ESPINOSA, Judge.

¶1 Petitioner Peter Graham seeks review of the trial court’s order summarily dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. After a jury trial, Graham was convicted of possession of marijuana, possession of drug paraphernalia, and possession of a deadly weapon during a felony drug offense. The court placed him on probation for concurrent, three-year terms, and we affirmed his convictions and dispositions on appeal. *State v. Graham*, No. 2 CA-CR 2009-0331 (memorandum decision filed May 28, 2010).

¶2 In Graham’s post-conviction relief proceeding, he alleged his trial counsel had been ineffective in failing to argue, at the hearing on his motion to suppress, that the police officer who had stopped him lacked a reasonable suspicion that he had violated A.R.S. § 28-796(B), because that statute was inapplicable to Graham’s conduct.<sup>1</sup> Specifically, he maintained that, had trial counsel raised such an argument,

the trial court would have needed to make an objective legal determination of whether Roger Road constituted a “roadway” and whether it had a “shoulder.” . . . Had the trial court been required to make an objective legal determination of the statute’s applicability, there is a reasonable probability that the court would not have found that the deputies had a particularized and objective basis for suspecting that [he] violated A.R.S. [§] 28-796(B). Lacking that particularized and objective basis, the trial court would have needed to conclude that the deputies were not justified in performing an investigatory detention of [him]. Thus, the trial court would

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<sup>1</sup>Section 28-796(B) provides, “If sidewalks are not provided, a pedestrian walking along and on a highway shall walk when practicable only on the left side of the roadway or its shoulder facing traffic that may approach from the opposite direction.”

have been required to grant [his] Motion to Suppress, which would have resulted in the suppression of all evidence against [him], thereby eliminating the possibility of [his] conviction.

Graham also appears to have alleged that appellate counsel was ineffective in failing to argue that the trial court's reliance on § 28-796(B), as a basis for the police officer's investigatory detention, constituted fundamental error.

¶3 In a detailed ruling, the trial court summarily denied relief, finding Graham's claims were speculative and not colorable. *See State v. Boldrey*, 176 Ariz. 378, 380, 861 P.2d 663, 665 (App. 1993) (trial court "need only conduct an evidentiary hearing where the defendant has raised a colorable claim for relief"). In his petition for review, Graham repeats the arguments he made below and generally asserts the court abused its discretion in denying relief "without affording [him] the evidentiary hearing to which he was entitled."

¶4 Like the ultimate decision to grant or deny post-conviction relief, whether a claim is colorable, warranting an evidentiary hearing "is, to some extent, a discretionary decision for the trial court." *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). We will not disturb a trial court's summary denial of post-conviction relief absent an abuse of the court's discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶5 Moreover, because the trial court clearly identified and correctly resolved the Rule 32 claims Graham raised, no purpose would be served by reexamining that analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App.

1993). Instead, we approve the court's order denying post-conviction relief and adopt it.  
*See id.* Accordingly, although we grant review, relief is denied.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge